UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.	CRIMINAL NO.	03-10389-PBS
FRANCISCO RIVERA,		
Defendant		

MEMORANDUM OF SENTENCING HEARING AND REPORT OF STATEMENT OF REASONS

Saris, D.J.

7/21/04	el and the defendant were present for sentencing hearing on The matters set forth were reviewed and considered.
	for sentence pursuant to Title 18 U.S.C. 3553(c), as set forth e stated in open court.
1.	Was the presentence investigation report (PSI) reviewed by counsel and defendant including any additional materials received concerning sentencing?
	X yes no
2.(a)	Was information withheld pursuant to FRCrP 32(c)(3)(A)?
	yes <u>X</u> no
(b)	If yes to (a), has summary been provided by the court pursuant to FRCrP 32(c)(3)(B)?
	yes no N/A
3.(a)	Were all factual statements contained in the PSI adopted without objection?
	<u>X</u> yes no
(b)	If no to (a) the PSI was adopted in part with the exception of the following factual issues in dispute:

(c)	Disputed issues have been resolved as follows after evidentiary hearing, further submissions and/or arguments:					
4.(a)	Are any legal issues in dispute?					
	yes <u>X</u> no					
	If yes, describe disputed issues and their resolution:					
	ANY BLAKELY ISSUES WERE WAIVED.					
5.(a)	Is there any dispute as to guideline applications (such as offense level, criminal history category, fine or restitution) as stated in the PSI?					
	yes <u>X</u> no					
	If yes, describe disputed areas and their resolution:					
(b)	Tentative findings as to applicable guidelines are:					
	Total Offense Level: 19					
	Criminal History Category: III					
	37 to 46 months imprisonment					
	24 to36 months supervised release					
	\$ 6,000 to \$ 60,000 fine					
	(plus \$ cost of imprisonment/supervision)					
	\$ restitution					
	\$ 200.00 special assessment (\$ on each of counts)					
6.(a)	Are there any legal objections to tentative findings?					
	yes no					
(b)	If no, findings are adopted by the Court.					
(c)	If yes, describe objections and how they were addressed:					
OR sentence preparation	hearing is continued to to allow for of oral argument or filing of written submission by					

7.(a)		Remarks by cou	unsel for defendant.1			
		<u> x</u>	yes no			
(b)		Defendant speaks on own behalf.				
		<u> x</u>	yes no			
(c)		Remarks by cou	nsel for government.			
		<u> x</u>	yes no			
8.(a)		The sentence will be imposed in accordance with the prescribed forms in the Bench Book Sec. 5.02 as follows:				
		37	months imprisonment [WITH A RECOMMENDATION TO 500-HOUR DRUG TREATMENT PROGRAM]			
			months/intermittent community confinement			
			months probation			
		36	months supervised release			
	\$	NONE	fine (including cost of imprisonment/supervision)			
	\$_		restitution			
	\$	200.00	special assessment (\$ on each of counts)			
	Ot	ther provisions	of sentence: (community service, forfeiture, etc.):			
- DI	EFE	ENDANT SHALL SEE	K SUBSTANCE ABUSE TREATMENT.			
(b)		the defendant	sentence, the Court has advised the defendant of s right to appeal within 10 days of the entry of cordance with FRCrP 32(a)(2).			
9.		Statement of re	easons for imposing sentence. ate space.			
(a) <u>2</u>	(a) X Sentence is within the guideline range and that range does not exceed 24 months and the Court finds no reason to depart from the sentence called for by application of the guidelines.					
_			thin the guideline range and that range exceeds the reason for imposing the selected sentence are:			

OR

 $^{^{1}\,}$ The order of argument and/or recommendation and allocution may be altered to accord with the Court's practice.

(b)	Sentence departs from the guideline range as a result of:
	substantial cooperation upon motion of the government
	a finding that the following (aggravating or mitigating) circumstance exists that is of a kind or degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that this circumstance should result in a sentence different from that described by the guidelines for the following reasons:
(c)	Is restitution applicable in this case?
	yes <u>X</u> no
	Is full restitution imposed?
	yes no
	If no, less than full restitution is imposed for the following reasons:
(d)	Is a fine applicable in this case?
	<u>X</u> yes <u>no</u>
	Is the fine within the guidelines imposed?
	yes <u>X</u> no
	If no, the fine is not within guidelines or no fine is imposed for the following reasons:
	Defendant is not able, and even with the use of a reasonable installment schedule is not likely to become able, to pay all or part of the required fine; OR
	Imposition of a fine would unduly burden the defendant's dependents; OR
	Other reasons as follows:
10.	Was a plea agreement submitted in this case?
	yes <u>X</u> no
	Check appropriate space:
	The Court has accepted a Rule 11(e)(1)(A) charge agreement because it is satisfied that the agreement adequately reflects seriousness of the actual offense behavior and accepting the plea agreement will not undermine the statutory purposes of sentencing.

 The Court	: has acce	pted ei	ther a F	ule 1	L1(e)(1)(B)
sentence	recommend	ation o	r a Rule	11(e)(1)(C)
sentence	agreement	that i	s withir	the	applicable
guideline	e range.				

- The Court has accepted either a Rule 11(e)(1)(B) sentence recommendation or a Rule 11(e)(1)(C) sentence agreement that departs from the applicable guideline range because the Court is satisfied that such a departure is authorized by 18 U.S.C. 3553(b).
- Suggestions for guideline revisions resulting from this case are submitted by an attachment to this report.

____ yes <u>X</u> no

- 12. The PSI is adopted as part of the record, either in whole or in part as discussed above and is to be maintained by the U.S. Probation Department under seal unless required for appeal.
- 13. Judgment will be prepared by the clerk in accordance with above.
- 14. The clerk will provide this Memorandum of Sentencing Hearing And Report on Statement of Reasons to the U.S. Probation Department for forwarding to the Sentencing Commission, and if the above sentence includes a term of imprisonment, to the Bureau of Prisons.

Date S/PATTI B. SARIS
United States District Judge

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